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ABSTRACT

This ERIC digest reports the background effects, and implications of Plyler v. Doe, a 1982 U.S. Supreme Court ruling guaranteeing the right of undocumented immigrant children to attend public school. The document is divided into five parts. "Background of the Plyler Case" describes the Plyler v. Doe ruling and the Texas law that the Court held to be unconstitutional under this ruling. "Undocumented Children in the United States" describes the everyday difficulties experienced by undocumented children and their families. "Access: Students' Rights and Schools' Responsibilities" describes how and why state residency requirements cannot be used to deny public education to undocumented children and emphasizes that school staff should be aware of these students' rights. "What Should School Staff Do?" describes practices schools should avoid regarding undocumented students, and makes recommendations regarding their proper treatment. "The Bottom Line" emphasizes how staff sensitivity can foster the atmosphere of acceptance and trust that undocumented students need. This digest includes 10 references. (TES)

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ERIC DIGEST

Clearinghouse on Rural Education and Small Schools September 1990

Undocumented Children in the Schools: Successful Strategies and Policies

Digest EDO-RC-90-4

UNDOCUMENTED IMMIGRANTS are people who have not been legally admitted into the United States. Estimates of the size of this population vary widely, from about 3 million to 12 million (Willshire Carrera, 1989a). Census data suggest, however, that of the millions of undocumented immigrants in this country, 77 percent are from Mexico and Latin America. Approximately 20 percent come (in equal numbers) from Asia and Europe (Willshire Carrera, 1989a).

One-fifth of all undocumented immigrants are estimated to be children under the age of 15 (Willshire Carrera, 1989a). Although undocumented children are not legal residents of the United States, they have the right to attend public school. Since 1982, a Supreme Court ruling, *Plyler v Doe*, has guaranteed this right.

This Digest reports the background of this landmark case and describes the difficulties that undocumented children are likely to face as a result of their status. Next, it considers the educational rights of undocumented children and the responsibilities of schools that serve them. Finally, it summarizes both practices to avoid and practices that can benefit this group of students.

Background of the Plyler case

The access of undocumented children to public schools in the U.S. is naturally an issue in states like Texas, where many undocumented immigrants live (U.S. Bureau of the Census, 1988). Before 1982, a Texas law prevented state funds from being used for the education of undocumented children. Under Texas law, Local Education Agencies (LEAs) could deny enrollment to such students.

In *Plyler v Doe*, however, the United States Supreme Court held, in a five-to-four decision, that the Texas law was unconstitutional. The ruling was based on the equal protection provisions of the Fourteenth Amendment to the U.S. Constitution. Of particular concern to the Court was the fact that children—rather than their parents—were involved (Uerling, 1982). The Court believed that denying undocumented children access to education punished children for their parents' behavior. Such an action, the Court noted, did not square with basic ideas of justice (Uerling, 1982).

Following the *Plyler* ruling, many undocumented students began to attend public schools in the United States (Haney, 1987). Because of the protections imposed by *Plyler*, however, the exact size of this group of students is difficult to estimate.

Undocumented children in the United States

All students deal with stressful events as they mature. Immigrant students, however, face additional challenges (Willshire Carrera, 1989b). The most distressing may include violence (often a result of warfare or civil strife in children's native lands) and separation from family members. Other stresses include adaptation to a new culture, the challenge of learning a new language, and, often, the insult of racial discrimination in this country (Willshire Carrera, 1989a). Many immigrant families have a difficult time simply making ends meet; many lead lives of poverty in urban areas (First, Kellogg, Carrera, Lewis, & Almeida, 1988; Olsen & Chen, 1987; Valdivieso (1990).

As a subset of the immigrant population, undocumented children are likely to confront the most distressing experiences of all (First et al., 1988). In addition to the usual experiences of growing up, and the unusual stress of immigration, undocumented immigrant children worry about deportation (Willshire Carrera, 1989a). If their undocumented status is discovered, the Immigration and Naturalization Service (INS) has the legal authority to investigate them. Further, the INS may detain them—apart from their families—in federally operated centers (First et al., 1988; Morales, 1987).

Access: Students' rights and schools' responsibilities

Plyler addressed the usual link between residency and the right to attend public school. The Court found that residency requirements are constitutional only if they are properly defined, uniformly applied, and designed to further a substantial state interest. In the case of undocumented children, the Court found that state residency requirements do not meet these tests.

States can no longer use residency requirements to deny undocumented children access to a tuition-free public education. Under *Plyler*, undocumented immigrant students have the same right to attend public schools through grade 12 as do citizens and permanent residents.

School staff need to be aware and sensitive as they deal with all immigrant students. In particular, they must act to preserve the right of access, especially by guarding the confidentiality of students' immigration status. In fact, if an undocumented student reasonably *perceives* that an action has the intent of exposing immigration status, then the right of access is compromised (Willshire Carrera, 1989a).

Plyler, moreover, requires that schools apply the right of access to *all* immigrant students. This step guards against improper distinctions between documented and undocumented children. One exception exists. Immigrants with F-1 and M-1 visas are required by Congress to get the approval of the INS before they may attend school in the U.S. (Willshire Carrera, 1989a). This provision, however, does not apply to other immigrant students, including undocumented immigrant children.

What should school staff do?

At a minimum, school staff should *avoid* certain actions. The spirit of the decision is that school staff should work to make access a *meaningful benefit*. The right of access, for example, implies that undocumented students also have access to appropriate special

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programs available to other students.

Actions schools should avoid include the following (Willshire Carrera, 1989b):

- asking about a student's immigration status or requesting documentation at any time;
- barring access to a student on the basis of undocumented status or alleged undocumented status;
- treating one student differently from others in order to determine residency, or on the basis of undocumented status;
- making inquiries of a student or parent that might expose the undocumented status of either; and
- requiring undocumented students or their parents to apply for Social Security numbers.

The final point may need some explanation. Because undocumented students are not eligible for Social Security numbers, schools may not require them as a condition of enrollment. If school staff *must* distribute application forms, they should stress that completing the forms is up to students and parents. Parents and students must understand that school staff will not monitor the actual filing of the forms.

In general, the activities of the INS and the professional obligations of public school staff do not intersect. Schools, for example, may not contact INS about any undocumented student. Officials of the INS should be welcomed in schools only with a valid subpoena or legal warrant (see Willshire Carrera, 1989b, for more details). If a school should inadvertently discover an undocumented status, the Family Educational Rights and Privacy Act (and similar state acts) pertain. These laws bar the school from supplying such information to any organization, including the INS.

For the most part, the above recommendations concern procedures. Meaningful benefits, however, are what the right of access is all about. Willshire Carrera (1989a) recommends that, in responding to the needs of undocumented students, school staff:

- understand the troubled nature of immigrants' daily lives;
- understand and actively provide the right of access established by *Plyler*;
- establish a school climate that all immigrant students will find open and hospitable;
- provide counseling and guidance that is responsive to the conditions of immigrant students' lives;
- develop policies and practices that strengthen immigrant students' access to effective instruction;
- respect immigrant communities' native languages and cultures, but at the same time, help immigrant students learn English well;
- hire, train, and retain competent staff who can provide appropriate services to immigrant students; and
- develop strong working relationships with immigrant families.

Teachers, administrators, and other school staff should strive to treat undocumented students with the same respect and care they show for other students. Effective instruction, productive school climate, parent involvement, the methods of sound bilingual education—all are needed by undocumented students, as they are by other immigrant, bilingual, and special needs students.

Access to public schools in the United States entitles undocumented students to the varied benefits provided by a number of special programs. These programs include (1) the Emergency Immigrant Education Program, (2) those that receive funds under Section 204 of the Immigrant Reform and Control Act, (3) the Transitional Program for Refugee Children, (4) bilingual education programs, (5) Chapter 1 programs, (6) Headstart programs, (7) special education, and (8) free and reduced meal programs (see Willshire Carrera, 1989a, for more details).

The bottom line

Because undocumented students lead lives under threat and suspicion, many leave school before graduation. Others simply do not enroll in school in the first place. Teachers and administrators can foster—both in the school itself and in the community—the atmosphere of acceptance, security, and trust that undocumented children desperately need. Instruction should reflect both a respect for native cultures and a commitment to helping students master English. Careful staffing is also important in creating programs that can respond sensitively to the needs of undocumented students.

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